UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,850	11/21/2003	Barbara K. Schmitt	3000177 / 7034992001	2928

7590 08/15/2006

Bingham McCutchen LLP
Suite 1800
Three Embarcadero Center
San Francisco, CA 94111-4067

EXAMINER	
PEARSE, ADEPEJU OMOLOLA	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,850	SCHMITT, BARBARA K.	
	Examiner	Art Unit	
	Adepeju Pearse	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-55* is/are pending in the application.

4a) Of the above claim(s) *36-55* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-35, drawn to a food ingredient, classified in class 426, subclass 573.

II. Claims 36-55, drawn to a method of preparing a gelatinous ingredient, classified in class 426, subclass 523.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially different process and does not require the specifics of the ratio of water utilized.

3. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Mr. Gary Lueck on 7/11/2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-35. Affirmation of this election must be made by applicant in replying to this Office action. Claims 36-55 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Specification

5. The abstract of the disclosure is objected to because the form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. Correction is required. See MPEP § 608.01(b).

6. The use of the trademark "GEN" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

8. Claims 18-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble recites "a grilled food product", however, there is no recitation in the body of the claim as to how to arrive at a grilled the food product.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –

(e) The invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1-7, 10-11, 14, 18-25, 28-29 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Morgan et al (US Pat. No. 6,632,468). With regard to claim 1, Morgan et al disclose a composite food comprising a gelatinous base, one or more additives including flavoring agents (abstract, col 2 line 48), heating the food product in a microwave oven (col 6 lines 29-30). It is inherent that the product releases steam because a gelatinous product comprises water as a component, which releases steam upon being heated.

11. With regard to claims 2, Morgan et al disclose that the gel structure melts when the product is heated (col 3 lines 43-47).

12. With regard to claims 3-6 and 21-24, Morgan et al disclose incorporating an agar, agar gum, corn syrup solids, etc in the gel base (col 2 lines 40-61).

13. With regard to claims 7 and 25, Morgan et al disclose incorporating mono- or di-glycerides in the gel base (col 2 lines 60-61).

14. With regard to claims 10 and 28, Morgan et al disclose incorporating soybean oil in the gel base (col 3 line 5).

15. With regard to claims 11 and 29, Morgan et al disclose incorporating flavoring components (col 2 line 48).

16. With regard to claims 14 and 32, Morgan et al disclose barbeque seasoning as flavoring (abstract).

17. With regard to claim 18, Morgan et al disclose a food product heated in a microwave oven comprising a gelatinous base and one or more additives (col 6 lines 20-30, abstract, col 2 line 48).

18. With regard to claim 19, Morgan et al disclose that the gelatinous base is mixed with other ingredients (col 5 lines 40-43).

19. With regard to claim 20, Morgan et al disclose a composite food comprising a gelatinous base, one or more additives including flavoring agents (abstract, col 2 line 48), heating the food product in a microwave oven (col 6 lines 29-30). It is inherent that the product releases steam because a gelatinous product comprises water as a component, which releases steam upon being heated.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

21. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

22. Claims 8-9, 12-13, 15-17, 26-27, 30-31 and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgan et al (US Pat. No. 6,632,468) in view of Linford et al (US 2001/0043974) and Benson et al (US. Pat. No. 4,297,942).

23. With regard to claims 8 and 26, Morgan et al disclose the presence of cellulose gum as an additive (col 2 line 58) but failed to disclose cellulose powder. However, there is no patentable distinction seen between both components at this time and it would not involve an inventive step for one of ordinary skill in the art to utilize either the gum or powder for the same purpose of being a texturizing component in the food product.

24. With regard to claims 9 and 27, Morgan discloses adding food coloring to the food product (col 5 line 30), but failed to disclose caramel color. However, caramel color is a conventional color in the art and it would not involve an inventive step to utilize this coloring as evidenced by Linford et al that teach preparing flame-grilled patties comprising caramel flavor (0023). It would be obvious to one of ordinary skill in the art to modify Morgan et al with the teaching of Linford et al by utilizing a caramel color to impart coloring to the meat product.

25. With regard to claims 12-13, 15, 30-31 and 33, Morgan et al disclose adding natural or artificial flavors to the food product (col 2 lines 53-54), but failed to disclose adding charcoal, lemon or beef. However, these flavors are conventional in the art and it would not involve an inventive step to utilize them as flavors in food product as evidenced by Benson et al that teach a charcoal-broiled flavor meat product and would be obvious to one of ordinary skill in the art to utilize this flavors in food products.

26. With regard to claims 16 and 34, Morgan et al disclose adding additives including mono- or di-glyceride, cellulose, flavoring, soybean oil, etc but failed to disclose grill, char or beef

flavor. However, these flavors are conventional in the art and it would not involve an inventive step to utilize them as flavors in food product as evidenced by Linford et al that teach adding grill flavor to meat patties (0023).

27. With regard to claims 17 and 35, Morgan et al 0.3-20% by weight of a gelling agent including agar, 0.1-60% by weight of flavoring and or texturizing components including mono- or di-glyceride, corn syrup solid, cellulose gum, 5-40% by weight of a fat/oil including soybean oil (col 2 lines 40-67) and food coloring as needed. However, Morgan et al failed to disclose grill flavor, caramel color, beef flavor or char flavor. These flavors and color are conventional in the art and it would not involve an inventive step to utilize them in food product as taught by Linford et al as recited above.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art discloses similar subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Peju Pearse

SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700